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June 19, 2000

RECEIVED

JUN 19 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WRITTEN EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., Room TWB-204
Washington, D.C. 20554

Re: CC Docket No. 98-147

Dear Ms. Salas:

BellSouth has sent the attached written ex parte to Lawrence Strickling, Chief of the Commission's Common Carrier Bureau, today. Copies have also been sent to the following Commission staff: Michelle Carey; Margaret Egler; Johanna Mikes; Staci Pies; and William Kehoe.

In accordance with Section 1.1206(b)(1), I am filing two copies of this notice in the docket identified above. If you have any questions concerning this, please call me.

Sincerely,


Kathleen B. Levitz

Attachment

cc: Lawrence Strickling
Michelle Carey
Margaret Egler
Johanna Mikes
William Kehoe
Staci Pies

No. of Copies rec'd 0+2
List A B C D E

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June 19, 2000

Mr. Lawrence E. Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: CC Docket No. 98-147
Implementation of *Line Sharing Order*

Dear Mr. Strickling:

BellSouth is filing this letter to inform you of how BellSouth proposes to proceed if it confronts a specific situation for which the Commission's *Line Sharing Order*¹ does not give clear instruction. This situation arises where a customer's premises is served by only one copper facility and an existing line sharing arrangement is in place with a competitive local exchange carrier providing data service ("Data CLEC") and an incumbent local exchange carrier ("ILEC") providing voice service. A competitive local exchange carrier providing voice service ("Voice CLEC") then obtains the voice customer's business and wishes to provide the voice service by purchasing an unbundled network element ("UNE"), *i.e.*, the copper loop, from the ILEC. In this situation, the *Line Sharing Order*, read in conjunction with previous Commission Orders,² is ambiguous about who should have first right to the loop – the Data CLEC or the Voice CLEC.

¹ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order in CC Docket No. 98-47 and Fourth Report and Order in CC Docket No. 96-98*, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*").

² *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499, 15693 ¶ 385 (1996) ("*Interconnection Order*"), *modified on reconsideration*, 11 FCC Rcd 13042 (1996), *vacated in part, Iowa Utilities Bd v. FCC*, 120 F.2d 753 (8th Cir. 1997), *aff'd in part and rev'd in part sub nom. AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999).

BellSouth's confusion arises from its reading of paragraphs 72 and 73 of the *Line Sharing Order*, which state:

Incumbent Remains the Voice Carrier. Incumbents are not required to provide unbundled access to carriers seeking just the data portion of an otherwise unoccupied loop (often referred to as a "dry loop.") As stated previously, line sharing contemplates that the incumbent LEC continues to provide POTS services on the lower frequencies while another carrier provides data services on higher frequencies. The record does not support extending line sharing requirements to loops that do not meet the prerequisite condition that an incumbent LEC be providing voiceband service on that loop for a competitive LEC to obtain access to the high frequency portion. Accordingly, we conclude that incumbent LECs must make available to competitive carriers only the high frequency portion of the loop network element on loops on which the incumbent LEC is also providing analog voice service (often referred to as a "wet loop"). *We note that in the event that the customer terminates its incumbent LEC provided voice service, for whatever reason, the competitive data LEC is required to purchase the full stand-alone loop network element if it wishes to continue providing xDSL service.* Similarly, incumbent carriers are not required to provide line sharing to requesting carriers that are purchasing a combination of network elements known as the platform. In that circumstance, the incumbent no longer is the voice provider to the customer.

GTE requests that we clarify that an incumbent carrier can disconnect a shared line if a customer does not pay its local voice telephone bill. If the incumbent carrier has disconnected the customer's voice service in compliance with applicable federal, state and local law, then there is no longer an incumbent voiceband service with which the competitive LEC can share the loop. The same holds true if the customer voluntarily cancels incumbent LEC provided voiceband services on the shared loop. *In those situations, in order to continue to provide data services to that customer, the competitive LEC must purchase the entire unbundled loop and must pay the incumbent LEC the forward looking cost for that unbundled network element. We would find it unacceptable, and potentially discriminatory under section 201 or a violation of section 251 obligations, however, for the incumbent to cause or require any interruption of the competitive LEC's service in order to execute such a loop access status change.*³

Based on the italicized portion of the above quoted paragraphs, some Data CLECs have asserted that if a customer discontinues its voice service with the ILEC, no matter the reason, the Data CLEC must be notified and given first right of use for the entire loop for data purposes. When only one copper facility serves the customer premises, as described in the situation above,

³ *Line Sharing Order* ¶¶ 72 and 73 (footnotes omitted).

however, this interpretation would render the Voice CLEC unable to provide voice service because the Data CLEC would control the entire loop. Conversely, if the Voice CLEC were given first right to the loop, the Data CLEC's service would have to be interrupted because the Voice CLEC would control the entire loop.⁴

The Commission noted in footnote 163 of the *Line Sharing Order* that a Data CLEC and Voice CLEC could possibly enter into a voluntary line sharing arrangement in such situations. The Data CLEC and Voice CLEC, however, may not choose to establish a line sharing arrangement. Moreover, even if the Data CLEC and Voice CLEC wanted to institute a line sharing arrangement, such an arrangement would require time to be established and rendered functional. The *Line Sharing Order*, however, does not clearly define who should control the loop if the Data CLEC and Voice CLEC do not wish to share the line or, if they do wish to line share, who should control the loop during the institution of the line sharing arrangement. Consequently, BellSouth fears that it will be caught between Scylla and Charybdis when both the Data CLEC and the Voice CLEC each claims it has exclusive right to the loop, and the entity that does not receive the loop accuses BellSouth of anticompetitive conduct. Therefore, BellSouth provides this letter to inform the Commission how BellSouth will address this issue when it arises.

BellSouth has no incentive to favor either LEC because BellSouth will no longer have the customer. BellSouth believes, however, that the Voice CLEC should receive exclusive use of the loop for at least two reasons. First, if the loop were awarded to the Data CLEC, unless the Data CLEC could offer voice over DSL, the customer would be without voice service. Policy reasons, such as the importance of the telephone for everyday communications and safety features such as 911, would indicate that the voice provider should prevail.⁵ Second, the *Line Sharing Order* itself states that if a Voice CLEC becomes the voice provider that "the xDSL-providing competitive LEC [Data CLEC] may enter into a voluntary line sharing agreement with the voice-providing competitive LEC."⁶ This statement indicates that the Commission anticipated that Voice CLEC would control the loop and the Data CLEC would seek to enter a line sharing agreement in order to provide data services.

⁴ In the event a customer's premises is served by more than one copper facility, but only one of the loops is being used on a line sharing basis, and the customer changes to a Voice CLEC for voice service, BellSouth will offer the Data CLEC the existing loop over which it is providing service, at the full UNE rate, and will establish voice service for the Voice CLEC on the spare loop. This practice appears to be the most efficient because the existing loop is DSL compatible, *i.e.*, the loop is currently supporting DSL service. The spare loop, however, may not be DSL compatible. If the Data CLEC were moved to the spare loop, it might incur additional expense to condition the spare loop for DSL service.

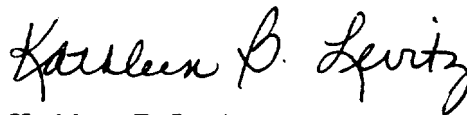
⁵ BellSouth anticipates that in many cases the customer may be unaware that changing voice carriers could result in loss of either its voice service or ADSL service.

⁶ *Line Sharing Order* at n. 163.

Mr. Lawrence E. Strickling
June 19, 2000
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For these reasons, when BellSouth receives confirmation from a Voice CLEC that it has become the voice provider for a customer, through the purchase of UNEs, and that customer's premises has been served by only one copper facility over which a Data CLEC and BellSouth had been line sharing, BellSouth will provide the loop to the Voice CLEC. BellSouth will notify the Data CLEC that the only available loop to the customer's premises has been purchased by a Voice CLEC and that data service to the customer will be terminated within a specific timeframe. This will allow the Data CLEC an opportunity to contact the customer and explain the reason for interruption of the data service or to attempt to pursue a line sharing agreement with the new Voice CLEC. BellSouth believes that this approach complies with both the letter and spirit of the *Line Sharing Order*. BellSouth welcomes any guidance the Commission may wish to provide on this matter.

Very truly yours,

A handwritten signature in black ink, reading "Kathleen B. Levitz". The signature is written in a cursive, flowing style.

Kathleen B. Levitz

CC: Michelle Carey
Staci Pies
Margaret Egler
Johanna Mikes
William Kehoe